

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1055 of 2024

Arising Out of PS. Case No.-71 Year-2020 Thana- SHEIKHOPUR SARAI District-
Sheikhpura

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1. Md. Munnu S/O Serajuddin R/O Village- Charmari, P.S. Sheikhopur Sarai, District- Sheikhpura.
 2. Md. Shamsad @ Shamshan S/O Md. Anwar R/O Village- Charmari, P.S- Sheikhopur Sarai, Dist.- Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arfa Darakshan W/O Md. Ehshan Ulla R/O Village- Pahariya, P.S- Sheikhopur Sarai, Distt.- Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Prabhat Ranjan Singh, Advocate
For the State	:	Mr.Arvind Kumar Pandey, APP
For O.P. No. 2	:	Mr. Dharendra Kumar Sinha, Advocate
		Mr. Amrit Lal, Advocate
		Ms. Soni Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 17-11-2025

Heard learned counsel for the parties.

2. The instant criminal revision petition has been filed on behalf of the petitioners against the order dated 05.10.2024 passed in Sessions Trial No. 34 of 2023, arising out of Sheikhopur Sarai P.S. Case No. 71 of 2020 by learned Sessions Judge, Sheikhpura, whereby and whereunder the evidence of the defence has been closed by the learned Sessions Judge.



3. Learned counsel for the petitioners submits that vide order dated 21.09.2024, the application filed on behalf of the defence under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.') has been allowed and examination of two witnesses was allowed for next date of hearing subject to payment of cost of Rs.1,000/-. Learned counsel further submits that these two witnesses were earlier named as prosecution witnesses but the prosecution did not examine these witnesses and one of the witnesses was the son of deceased in the case. On application filed under Section 311 of Cr.P.C., the examination of these witnesses as defence witnesses has been allowed, however, with the condition that the defence had to examine the witnesses on the next date of hearing and in default the defence evidence would be closed without further opportunity. Pursuant to order dated 21.09.2024, the cost of Rs.1,000/- was deposited. On the next date of hearing, i.e., 05.10.2024, due to illness of learned counsel, it was not possible for the defence to examine the witnesses and application to this effect has been filed before the learned trial court but the learned trial court without taking into consideration the fact that defence witnesses could not be examined due to indisposition of the learned counsel for the petitioners/accused persons, in mechanical manner, closed the



evidence of the defence. Further, an application has been filed on 19.10.2024 for recalling the order dated 05.10.2024 but the said application was also rejected vide order dated 19.10.2024.

4. Learned counsel for the petitioners next submits that the learned trial court did not consider that the application was allowed under Section 311 of Cr.P.C. and it is also the duty of the court to see that justice is done in the matter. Learned counsel referred to the case of ***Harendra Rai Vs. State of Bihar & Ors., (2023) 13 SCC 563*** especially paragraph 128, wherein the Hon'ble Supreme Court held that Section 311 of Cr.P.C. confers wide power on any court at any stage of any inquiry, trial or other proceeding under this Code to summon material witness or examine person present. Such person may not be a person summoned as a witness power to recall and re-examine and the Hon'ble Supreme Court further held that the concept is that it should be essential for the just decision of the case. But this proposition of law was not taken into consideration by the learned trial court. Therefore, the impugned order is bad and the same be set aside. Learned counsel further submits that the petitioners undertake to examine the witnesses on any date fixed by this Court or the learned Sessions Judge if an opportunity be given to the petitioners.



5. Learned counsel appearing on behalf of opposite party no. 2, however, vehemently contended that there is no merit in the present petition and the same is not even maintainable. Learned counsel further submits that the accused persons were given an opportunity of examination of their witnesses on a single date but they failed to bring the witnesses to examine on that date and the learned trial court rightly closed their evidence. Learned counsel further submits that there is no illegality or impropriety in the impugned order so as to make the order amenable in revisional jurisdiction of this Court. Learned counsel further submits that the impugned order is not a final order and no revision would lie against such order. Learned counsel further submits that the petition for recall of the impugned order has also been filed and the same was rejected and the accused persons are trying to delay the trial and filing such frivolous applications. Learned counsel thus submits that the present revision petition is devoid of merit and the same may be dismissed.

6. I have given my thoughtful consideration to the rival submission of the parties. From the facts brought on record and the submission of learned counsel for the petitioners, it is very much apparent that an opportunity was already given



to the accused persons/petitioners for examination of their witnesses on a single date and they failed to examine their witnesses on that date though cost of Rs.1,000/- was deposited in terms of order dated 21.09.2024. However, the endeavour of every courts should be to find out the truth and to consider the material which would be essential for the just decision of the case. When it has been brought to the notice of the learned Sessions Judge that due to illness of learned counsel for the accused persons, defence witnesses could not be examined, the learned Sessions Judge should have taken this fact into consideration instead of straightway rejecting the application filed by the petitioners, the learned trial court should have given another opportunity to the accused persons. The application was filed under Section 311 of Cr.P.C. for allowing the witnesses to be examined as defence witnesses and the said application was allowed by the learned trial court. Therefore, it was incumbent upon the learned trial court to see that such witnesses get examined and default of one day should not have resulted in closure of the evidence of the defence. Therefore, the impugned order could not be sustained.

7. The contention of learned counsel for opposite party no. 2 that the revision petition is not maintainable, is



without any substance. It has been held way back in the case of ***Madhu Limaye Vs. State of Maharashtra, (1977) 4 SCC 551*** that intermediary orders are also amenable to the revisional jurisdiction and the order need not be final in each and every case. Further, submission about delay in trial would otherwise have been relevant but for the reason that it is also the duty of the court to arrive at final and just decision a proper opportunity be given in such situation. It is also a fact that after appearance of opposite party no. 2 through her counsel, the matter got adjourned before this Court for the reasons which could only be attributed to opposite party no. 2. Even though time was sought on 16.07.2025 for filing counter affidavit, no such counter affidavit has been filed on behalf of opposite party no. 2 till date. At this stage, learned counsel for the petitioners submits that some of the accused persons are still in custody and no useful purpose would be served for the petitioners/accused persons in lingering the matter.

8. Having regard to the discussion made hereinbefore, I think it just and proper to allow the present criminal revision petition and therefore, the impugned order dated 05.10.2024 is set aside and learned trial court is directed to fix a date for examination of the defence witnesses on receipt



of a copy of this order and the accused persons/petitioners are directed to ensure that the witnesses are examined on the date(s) fixed by the learned Sessions Court. If the defence fails to examine the witnesses even after this order, no further opportunity will be given.

9. Accordingly, the present criminal revision petition stands allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.11.2025
Transmission Date	19.11.2025

